

REMARKS

Claims 1-3, 6-10, 13-15, and 18-21 are pending.

Claims 1-3, 6, 8-10, 13, 14 and 18-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Vinarsky (U.S. Pat. No. 5,597,087). Vinarsky discloses a sports bottle having an angled opening, which according to the reference allows for “nearly complete bottle filling with the bottle tilted, such as when filling from a drinking fountain with low water jet.” Abstract. The bottle is described as having a hook for hanging and a straw (outlet means 27) extending through the cap for the angled opening, “which allows someone (not shown) to take liquid directly from the bottle 10 and into the mouth without removing the cap or spilling, even while exercising.” Col. 3, ll. 4-8.

In contrast, the present invention, as defined by claim 1 for example, is directed to a chilling device comprised of a body having a planar base and a top with a mouth formed in the top such that an opening defined by the mouth is coplanar with the base. Further, claim 1 calls for the cover to have a hollow interior that communicates with the hollow interior of the body when the cover is engaged with the mouth. In this regard, the cover and the body collectively provide a closed volume that permits limited expansion of liquid contained in the body into the cover. Moreover, liquid can only be removed from the chilling device when the cover is disengaged from the mouth.

Vinarsky, on the other hand and as noted above, explicitly teaches that liquid may be removed from the sports bottle when cap 26 is engaged with the fill opening neck 22. More particularly, the reference teaches “an outlet means” which is identified as a straw or squirt outlet means. Notwithstanding this explicit teaching in the reference, the Examiner asserts that the sports bottle is capable of performing the function recited in the claims. However, the reference explicitly teaches that the sports bottle is not capable of such function and discloses specific structure that renders the sports bottle incapable of such a function – a straw extending through the cap.

Additionally, recitation in the claims regarding the incapability of liquid to be removed from the chilling device while the cover is engaged with the mouth is not just a recitation of functional language or “intended use”. The language defines the structure of the claimed chilling device. More specifically, the language broadly defines how the structure of the cover prevents the

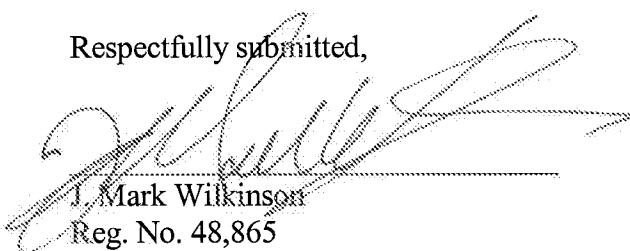
Serial No.:10/594,942
Inventor(s): Omdoll
Title: *Chilling Utensil and Method of Use*
Docket No.: 1414.093

removal of liquid from the chilling device, e.g., has no openings or straws, and also defines how the engagement of the cover with the mouth prevents the escape of liquid from the chilling device when the cover is engaged with the mouth, e.g., a sealed engagement. So, not only does the language define more than "intended use" that is incapable of being performed by the art of record but the structural limitations defined by the language are not taught or suggested by the art of record.

As such, the claims are believed to define the invention in a manner that is neither taught nor suggested by the art of record. Therefore, it is believed that claims 1-3, 6-10, 13-15, and 18-21 are in condition for allowance. A Notice of Allowance for claims 1-3, 6-10, 13-15, and 18-21 is therefore requested.

Applicant believes that there are no fees due in connection with this communication. Nevertheless, authorization is given to charge any additional fees or credit any overpayment in connection with this or any future communication to the Deposit Account No. 50-1170. The Examiner is invited to contact the undersigned by telephone if it would help to expedite matters.

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Respectfully submitted,

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